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Federal Communications Commission
Office of the Secretary

In the Matter of)
)
Structure and Practices of the Video Relay Service) CG Docket No. 10-51
Program)
)

COMMENTS OF PAH! VRS AND INTERPRETEL LLC

Dated: August 18, 2010

By PAH! VRS and Interpretel LLC :

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I. INTRODUCTION

PAH! VRS and Interpretel LLC (collectively, “the Companies”) commend the Commission for undertaking a comprehensive examination of the VRS program as it exists today and commencing a

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forward-looking process of determining the scope and shape of the program will take in the future. Such an examination will ensure the continued availability and sustainability of this vital, life-changing service, continuing to facilitate meaningful and functionally equivalent communications for all segments of American society. Those with personal experience using VRS can attest to the profound impact it has had on communication access and in providing qualitatively better communications to the deaf and hard of hearing communities than are otherwise available. The Companies recognize that there are areas of the VRS program worthy of reexamination and revision at this time to ensure that the industry stays on pace with emerging technologies and continues to move closer to true “functional equivalency.” We welcome the opportunity to participate in this important discussion, and to ensure the viability of VRS for years to come.

There are three key topics that the Companies would like to address in their response. The first is the need to move the certification of new providers forward. There have been significant gains made by the VRS industry over the past eight years, especially with regard to increased efficiency. This increased efficiency has resulted in lowered per-minute cost of providing VRS. In addition, advancements in technology have made VRS easier to use and more accessible for all users, attracting more to the program. These gains can be largely attributed to the competition that has existed in the market, and the best way to ensure continued gains in efficiency and technology as well as quality-of-service is through a competitive market that is stimulated by new entrants.

The second topic that is critical to the sustainability of the VRS program is to commence a comprehensive rate-setting process as soon as possible that includes all VRS providers, including those with pending certifications. Many of the issues raised with regard to funding the VRS program can best be addressed through an intensive and exhaustive examination of all the costs that are necessary to sustain

the program and ensure that it keeps pace with the rapid growth and evolution of technology. At the same time, VRS providers need a clear understanding of exactly what is to be expected of them, and require enough time to make resource allocation decisions in advance of any changes to the reimbursement rates.

The final topic is establishing clear, industry-wide standards for videophone equipment and VRS communications as a whole. This is critical to ensuring interoperability, consumer choice and the best use of research and development dollars. The current environment is a wide-open playing field. It is akin to each telephone company having their own proprietary system; this increases the costs of interoperability. Industry-wide standards with regard to types of videophone equipment and communication standards would open the door for true interoperability of equipment and yield a variety of options for consumers to choose from including mobile applications that are emerging in the market. The Companies urge the Commission to convene a committee of consumer group representatives and VRS providers (including those with pending applications) to develop consensus as to what these standards should be.

We look forward to the insightful comments that are sure to be coming as a result of this NOI and are excited to be a part of building a better, stronger and more sustainable VRS program.

II. BACKGROUND

PAH! VRS and Interpretel LLC, unaffiliated video relay services providers and new market entrants, hereby respond to the Commission's June 8, 2010 Notice of Inquiry in the above captioned proceeding. PAH! VRS and Interpretel LLC (collectively, "the Companies") share a common interest in supporting and contributing to the development of a vibrant, meaningfully competitive, video relay services ("VRS") market that offers the public diversity in the availability of functionally equivalent relay services. The Companies readily recognize that the realization of their shared commercial interests comes not only from their focus on the professional provision of relay services to the public, but on the effective

provision of reliable, responsible, and compliant services that meet and ultimately exceed the Commission's Mandatory Minimum Standards ("MMS"), under an unambiguous, stable regulatory environment.

III. DISCUSSION

In accordance with the

Commission's directives, the Companies have formulated this response with regard to the initial Notice of Inquiry promulgated by the Commission. Queries by the Commission and paragraph numbers have been left as they were issued, with the Companies' responses following each paragraph.

A. Part I – Adjustments and Modifications to Improve the Current Video Relay Service Compensation Methodology

1. Accounting Issues

11. VRS providers, despite differences in size, should theoretically all be incurring the same types of compensable costs. For example, they should all incur similar types of costs associated with communications assistants, equipment used by communication assistants, telephone and internet service and expenses, overhead elements and structures, including management-related expenses. We seek comment on the extent to which this is the case. We currently apply the Commission Part 32 – Uniform System of Accounts to TRS providers. We seek comment on whether Part 32 continues to provide the best system of accounting for VRS providers. If so, we also seek comment on what specific sub-accounts are appropriate to require for all VRS providers. We are especially interested in comments from the Fund administrator concerning which specific sub-accounts are properly required for all VRS providers, balancing the need for accurate cost and accounting data and not imposing unnecessary burdens on providers.

- Economies of scale dictate that there is a fixed basic cost for the provision of VRS services whether serving one consumer or many. In that certain providers have often not reached the point at which scale economies affect certain cost items, smaller providers are often put in a position where they generally can only provide more basic services while larger companies who realize greater financial efficiency are able to develop more enhanced services that are beneficial to the consumer at a lower cost point.
- Commission Part 32 is an extremely comprehensive set of regulations that is far too complex and demanding for most companies in the TRS industry to meet. It is recommended that Part 32, as a whole, not be incorporated for TRS providers.
- The Companies have no comment as to what specific sub-accounts are appropriate for VRS providers.

12. We also seek comment on whether the Commission should “cap” or set reasonableness limits (*e.g.*, based on scale) on the compensability of costs in total or for specific cost categories. For example, we seek comment on whether the Commission should define reasonable ranges, or establish maximum compensable amounts, for executive compensation, outreach expenses, and other expenses that, to date, have fluctuated substantially from provider to provider. We also seek comment on whether the Commission should set limits for other types of costs, such as cash working capital and building costs and dividend payments to investors. More specifically, to what extent should the Fund support debt repayment to capitalize for growth? Comments should provide supporting rationale for the positions.

- The Commission in effect already creates a “cap” or reasonableness limit on the compensability of costs with the establishment of VRS reimbursement rates. Providers unable to realize a profit at the then-current rate levels are not economically viable entities. Further limits to cost compensability should not be set either generally or in specific categories. There are many examples today of institutions where this has been attempted with less than favorable results. Generally, when limits are placed on a company’s ability to realize profits, development is among the first areas that are reduced. In the VRS industry, reduced development means the deaf and hard of hearing community will suffer, as innovation may suffer, and as a result the technology available to the community may not keep pace with technological advances in telecommunications services in general.
- The Companies believe that it is not appropriate for the FCC to set or regulate ranges or maximum amounts for executive compensation, marketing expenses, and other expenses. Within the limits established by the amounts compensable for VRS services, companies should not have restraints set upon their ability to internally allocate costs, expenses and revenues. Such regulation would have numerous disadvantageous results, such as inherently limiting the amount that may be spent on critical areas of their business and chilling the ability of companies to attract skilled and experienced executives, both of which may limit the effectiveness and growth of the VRS program. A well-managed business will allocate each of these costs effectively and efficiently without external regulation by the Commission.

2. Company-Specific Compensation

13. We seek comment on whether to establish company-specific compensation for each provider. Commenters should address whether a company-specific methodology would enable greater accuracy in matching compensation to costs than an averaged or three-tiered system. Comments should address the “tiered” system used in recent years and whether the tiered system should continue as is, be discontinued, or be modified. Commenters should also address whether a company-specific methodology is fairer to all providers. We also seek comment on whether a change to using company-specific calculations of compensation would require a rule change.

- It is the Companies’ opinion that company-specific compensation would stifle competition and innovation within the VRS industry, while at the same time adding greater burdens and costs to the Commission in regulating the industry without providing a significant advantage over a multi-tiered system in matching compensation to costs, and in doing so diminish the quality of service available to the deaf and hard of hearing community.
- Company-specific compensation would not provide greater accuracy in matching compensation to costs. As has been seen in the past, some companies will profess to have a much higher expense load than others. Compensating them on the basis of costs would mean that more efficient companies could therefore be at a disadvantage leading to an overall tendency for companies to inflate their costs. The single best way ensure that compensation is fair and commensurate to costs is for the established compensation scheme to be the same for all providers, incentivizing all providers equally to innovate

and increase their efficiency of operation while reducing discretionary costs so as to increase overall efficiency.

- The “tiered” compensation system used in recent years represents a strong compromise between matching compensation to costs, while at the same time fostering competition and innovation. It in effect establishes a market rates for services analogous to those that would be established for a commodity in an unregulated market, allowing companies to compete on efficiency and innovation.
- A number of strong proposals for establishing rates, expanding the current tier ranges and increasing the number of tiers have been presented and should be considered and discussed further by the commission and providers.
- Company-specific compensation would be inherently less fair to all providers than the current scheme or many of those thus-far proposed, as compensation would be skewed on a company-by-company basis to favor larger providers.
- Furthermore, company-specific compensation would be inherently unfair to providers who strive to innovate to increase efficiency and reduce costs.
- The Companies have no comment as to whether or not using company-specific compensation would require a rule change by the Commission. .

14. We further seek comment on whether a company-specific compensation methodology that continues to disburse funds based on minutes of use would require company-specific demand projections. Alternatively, this type of minutes-based compensation methodology could be based on historical demand adjusted by an industry-wide projected growth factor to establish the size of the fund. The administrator could project the growth in demand for VRS based on trend analysis and apply the

growth factor to each provider's historical (actual) demand for the prior year. We seek comment on this method and encourage commenters to propose other methods of projecting growth.

- This method of company-specific compensation does not take into account unpredicted current-year increases in growth that occur due to factors such as aggressive marketing and innovation in and implementation of new technologies, as the stated growth in demand is predicated on each providers actual historical demand for the prior year. As such it should not be implemented as it could be detrimental to a company that is currently experiencing significant growth for such positive reasons. The converse of this type of inefficiency is a company whose demand is currently decreasing. Such a company's historical data may in fact indicate growth, resulting in overcompensation. The potential for such inaccuracy and inefficiencies makes it clear that this form of company specific compensation should not be implemented.
- A methodology for projecting the size of the fund that takes into account overall historical growth factored by growth in market while also taking into account the impact new technologies, such as mobile applications that is not company specific may result in more efficient compensation rates.

15. We seek comment on the proper use of historical cost information. We note that four years of data comparing compensation rates based on projected compensable costs with what the rates based on actual, historical, compensable costs could have been, demonstrate a potentially significant discrepancy between the two approaches. Should historical costs be used to establish compensation rates, and if so, in what way? What factors should be considered or applied to historical costs to develop reasonable projected costs? How should demand growth factors be considered relevant to provider

compensation? Does a compensation scheme that is based on historical costs provide incentives for efficient delivery of VRS?

- It is important to understand how historical data alone skews the representation of cost figures, especially for start-up companies awaiting certification. Historical information currently has been shown to be an ineffective measure for any projections based upon the inflated statistics that can be seen in the industry from mid 2009 forward. Ideally this historical information could make an excellent basis for future projections, but such is not currently the case. As such, it does not properly incentivize the efficient delivery of VRS.

16. Commenters should address any other issues they deem appropriate concerning VRS compensation.

- The Companies note that cost controls can equitably be addressed through a thorough rate setting process. The Companies believe that a significant portion of the next six months should be devoted to such a process, with the active involvement of representatives of certified providers and those providers with pending certifications as well as the Commission so that multi-year rates can be established several months prior to implementation in order to give such providers and the Commission ample time to make any organizational adjustments necessary.
- The Companies suggest the establishment of an industry-wide working group, with representatives of all providers with current and pending registrations, so that the issues of rate structure and appropriate compensation, as well as other significant issues such as outreach and technological standards, can be discussed on an ongoing and active

basis. Such a working group could be comprised of representatives of each company, as well as representatives of the deaf and hard of hearing community, and could meet with representatives of the commission on a monthly or quarterly basis to proactively address these important issues and any others that may arise within the industry.

3. Outreach and Marketing Costs

17. We therefore seek comment on whether, and the extent to which, the Fund should compensate providers for outreach and marketing activities, including whether such funding should be capped for each provider.

- VRS services have not yet reached anything approaching full market penetration within the deaf and hard of hearing communities, and as such the benefits of the VRS program are not spread as widely as they might be.
- Both outreach and marketing are necessary expenses if we hope to achieve a broader availability and use of VRS. It is, however, difficult to imagine that VRS providers have eligible expenses in both categories.
- Outreach by its definition, should be provider-neutral and would be best performed by either the FCC itself or a neutral entity.
- If the Commission determines marketing costs are reimbursable, there needs to be a threshold for all providers. A comprehensive review of this should take place in the rate-setting process.

18. As a predicate matter, we seek comment on how to define “outreach” for purposes of this analysis. What components and activities should be considered part of outreach? How does “outreach” differ from “marketing”? Are there any safeguards that the Commission should adopt to help ensure that

expenditures attributable to each are differentiated? Should permissible costs be limited to those costs associated with outreach connected to the relay service used to perform the outreach (*e.g.*, using VRS to perform outreach related to VRS)? To whom may providers direct outreach activities for which providers may be compensated from the Fund – *i.e.*, to potential users only, or also to the general public? What should the purpose(s) of compensable outreach be?

- The definitions for outreach and marketing are clearly stated in the *Instructions for NECA Annual Reporting*.
- Outreach is defined as educational outreach via the following methods; newspapers, TV, Internet, community forums, etc. to inform the general community of TRS service in its various forms and future forms as technology evolves. Outreach is more generic, teaching and educating the community at large about relay, how to use it, how to call and receive calls from deaf and hard of hearing people.
- The components and activities of outreach are clearly identified as stated above in the *Instructions for NECA Annual Reporting*. Any component that is presented in a provider-neutral format should be classified as outreach.
- Marketing is simply any expenditure by a provider to persuade consumers to choose their particular relay service over that of other relay service providers.
- The commission could have a category for each for reporting purposes although it is doubtful that any provider would have any qualified expenses for outreach as defined above. Unless there is a reason for the Commission to be able to differentiate between marketing and outreach, companies should be able to report marketing and outreach costs as part of their annual reporting.

- Due to the difficulty of individual VRS providers to perform outreach in a provider-neutral format, it would make more sense for outreach to be conducted by an outside agent. Allowing the outside agent to use VRS for VRS outreach is appropriate as long as the outside agent clearly defines which VRS calls are associated with VRS outreach so they can be clearly monitored.
- It is appropriate and vital to both educate the deaf community, as well as the general public, as both would benefit from the use of VRS. The more the general public is aware of the ability VRS has to equal the playing field between deaf or hard of hearing individuals and hearing individuals, discrimination in the job market will begin to fade. Education for deaf and hard of hearing individual is equally important to help them achieve functionally equivalency as the availability of affordable broadband expands.
- The purpose of compensable outreach should be education for the deaf and hard of hearing community as well as the hearing community on the benefits and functions of VRS services.

19. In addition, we seek comment on how to compensate providers for outreach or marketing activities that we deem to be of the type eligible for compensation from the Fund. For example, should each provider be given a specified sum of money to spend on outreach and marketing (*e.g.*, based on cost per gross add)? Alternatively, should outreach costs be reimbursed through per-minute compensation up to a certain percentage of the rate established for each minute of use? We also seek comment on whether the Commission or administrator would be able to more effectively conduct a TRS outreach program through a coordinated, nationwide effort than the current provider efforts sponsored by individual providers.

- If expenses for marketing and outreach are considered compensable, there should be a portion of the reimbursement rate designed to compensate providers. If the reimbursement were designed as a percentage of the reimbursement tier rate, there would be a natural declining amount as companies move to higher tiers. A company in Tier 1 with less than 50,000 minutes certainly has to spend a greater proportionate share of their reimbursement than a company in Tier 3 with over one million minutes.
- These types of the calculations have merit, but do not guarantee that the money will be used for this purpose therefore this should not be implemented.
- We briefly commented on the question of marketing costs above and suggest that a thorough review of this should be a part of the rate-setting process.
- The question is whether you could reasonably expect any VRS provider to do outreach as defined above. If the Commission would like to see a pure outreach program in place, it seems obvious it will have to be done either by the FCC or by delegating this function to a neutral entity. We believe that true outreach must be provided in a provider-neutral format by the definitions outlined in the instructions for NECA reporting.
- Further, the FCC should appoint a working committee, with membership representative of the certified providers and providers with pending applications, to oversee the application of outreach funds in close coordination with the FCC and NECA.

4. Research and Development Costs

20. In recent years, the Commission has disallowed expenses associated with research and development, except to the extent that such expenses are necessary to meet our mandatory minimum standards. Nevertheless, newly emerging communication technologies could offer significant potential

for achieving greater functional equivalency for VRS users, and we recognize that Congress has directed the Commission to ensure that our TRS regulations do not discourage or impair the development of improved technology. We therefore seek comment on whether and, if so, the extent to which, the Commission should revise its rules to explicitly permit compensation for research and development, as well as what controls the Commission should put in place to ensure that such compensation is provided equitably across all VRS providers. For example, should compensation for research and development be included as part of the per-minute rate, or would it be preferable to have an established sum for this purpose, which could be divided among providers? Should there be a cap on reimbursable expenditures for research and development (*e.g.*, based on a percentage of revenue)? We also seek comment on what steps the Commission should take to ensure that the results of research and development, which would be supported by the Fund, are fairly shared so that all providers and ultimately all users are able to enjoy the results. Furthermore, as a threshold matter, we seek comment on how the Commission should define research and development for the sake of this analysis, and to ensure that if we revise our rules in this area, the revised rules are contoured to effectuate the goals of section 225(d)(2) of the Act.

- Ongoing research and development efforts are essential to the continued enhancement of the VRS program overall. To date, VRS providers have borne the cost of end-user equipment and integration of such technology into their service delivery platform, and absorbed such costs within the structure of the per-minute rate. Under the current structure, it is entirely appropriate for the research and development costs of platform development and the delivery of videophone equipment to consumers to be compensable costs.

- The Companies' belief is that the Commissions' methodology for research and development reimbursement should not be changed at this time. Currently, the TRS reimbursement rate implicitly includes reimbursement for research and development costs undertaken by providers, and this encourages efficiency and innovation within the current rate structure. In general, segregating research and development compensation from the per minute rate would create the potential for inefficiency, in that it could promote unproductive or inefficient development efforts if such efforts were not tied to other economic constraints.
- To better understand research and development costs, NECA & the FCC should revise their annual audits to include research and development expenses in the aggregate total of expenses submitted to NECA for auditing purposes
- The Companies note one exception to the general rule set forth above: in order to better understand the actual costs of delivering VRS service and incorporating advances in technology into their offerings, the Commission should consider separating the provision of Videophone Equipment from the provision of VRS service. The separation of videophone equipment provisioning expenses from those related to the provision of VRS services would then allow a more accurate view of the unbundled associated research and development costs, and create the potential for providers and the Commission to better serve consumers.

5. Videophone Equipment

21. To begin with, how should the Commission compare the cost and quality of different videophones with the cost and quality of different voice telephones? For example, a voice telephony user generally has numerous equipment options, ranging from the least expensive landline telephones to mobile phones to personal digital assistants that integrate voice and data communications. In addition, a voice telephony user may purchase a voice telephone from a selection of retail establishments, rather than being limited to his or her service provider. Do VRS users have similar options and if so, what are they? What is the most efficient way for people who are deaf or hard-of-hearing to obtain videophone equipment? How far should the Commission go to ensure that affordable videophone equipment is available to VRS users? Should the Commission create a program to create direct user subsidies for the provision of videophones? Should efforts be made to switch VRS users over to mainstream video technology so they can acquire phones from retail establishments and not be dependent on individual providers for their phones? What are the approximate costs of videophones in retail establishments? Are there videophones that are priced comparably to voice phones? If the least expensive videophones are priced similarly to the least expensive voice telephones, does the Commission need to subsidize videophone equipment? Various states have equipment distribution programs that provide specialized customer premises equipment to people with disabilities. To what extent do such programs distribute videophones? What can be learned from these programs that could be applied to a national equipment program? Does allowing a VRS provider to subsidize the purchase of videophones improve deployment of needed videophone equipment or deter competition? Should VRS providers be allowed to require long-term contracts with VRS users if they do subsidize the equipment as many wireless telephone companies do now?

- The cost and quality of videophones should be on an equivalent scale to voice telephones. Devices with more functionality and better quality should command a higher price. Types of voice phones range from POTS phones through IP enabled phones, with an associated increase in price. As voice phones lack video capabilities, videophones at a similar level of quality to voice phones will command a higher price.
- VRS consumers have limited options when it comes to choosing videophones. There have been compatibility issues between various videophone manufacturers that are slowly being resolved. Certainly, the lack of approved standards has exacerbated this situation. This will only tend to continue, as recently several providers have started to offer mobile devices that are functionally compatible with some VRS providers.
- Currently most consumers acquire their equipment from a provider. To date this has been the most efficient method of distribution due to the market niche occupied by videophone equipment. However, this method tends to make that provider the default “provider of choice.”
- If the current vertical integration of VRS components remains in place, VRS providers will continue to provide various equipment options. Aggressive market entrants are developing devices that will be within the price range of the deaf community however, this does not address issues with interoperability that restrict the growth of VRS.
- The Commission should ensure that all equipment used in the provision of VRS Services meet established standards. Companies choosing to be a VRS Equipment provider should be required to ensure that their products meet the applicable standards promulgated by the FCC. Under such an arrangement, VRS Service providers would

still be able to distribute equipment to consumers, while, ensuring that equipment conforming to FCC standards is widely available, facilitating interoperability and the opportunity to extend VRS to a greater number of consumers.

- Today, there is not a robust retail market for videophones. No mainstream retailers carry videophones of the type that could be used for VRS. It would be unwise to base a VRS service model on the premise that a VRS consumer could go a local store and purchase a videophone.
- Efforts to influence some of the companies engaged in supporting mainstream video technology have not yet been successful due to the perceived narrow market niche occupied by the videophone market. These companies have spent years on development projects concentrating on other market segments. This attitude might be influenced by targeted marketing efforts but remains a challenge.
- The Companies are unaware of any state-funded program that distributes videophone equipment.
- These state-funded programs have distributed telephone equipment to qualified consumers at no cost to the consumer. The consumer is free to choose the equipment that best meets their particular needs independent of having to use a particular vendor's service plan. A national equipment program for VRS should be created to offer videophone equipment that would allow the consumer to use their VRS Service provider of choice.
- In the current environment, VRS users can only choose products that are supported by VRS providers whose primary revenue stream is dependent on minute generation, not

equipment sales. The fact that some VRS providers give away videophones has deterred competition. Because the provider with the largest share of the market has given away videophones, the perception among VRS consumers is that “videophones should be free.” Because of this, all other VRS providers know that they cannot charge for videophones due to the “free” expectation. This has stifled innovation and development of new videophones as the return on investment to the providers can only come through increased usage. This usage is not guaranteed as there is no lock-in allowed. Compare this to the domestic cell phone market. Carriers subsidize phone handsets because they can lock in consumers with a contract and they know they will be receiving a guaranteed revenue stream. This method is favorable to providers albeit in a less than consumer-friendly manner.

- At present, virtually all VRS consumers obtain their equipment from VRS providers. The absence of industry standards has created an environment where each provider seeks to have their proprietary protocol adopted as the de facto industry standard. As noted, this has impacted the level of interoperability between equipment providers and has negatively influenced the promotion of functional equivalency for VRS consumers.
- New providers are forced to devote much of their start-up capital to supporting dated technology that has been widely distributed rather than being able to direct their resources to more relevant, useful and advanced product and service development. A set of standards that would ensure a greater level of interoperability would greatly benefit the end user who could then choose which VRS Service provider they wanted to use based on the level of service provided, not the equipment they support. We strongly

urge the Commission to consider establishing a committee, with representation from each of the certified providers and each of those providers with pending certifications, whose responsibility it would be to develop, review and update a set of standards to govern the provision of VRS equipment.

- Further, the FCC should consider separating accounting and reimbursement for expenses related to the provisioning of VRS Equipment from those related to the provisioning of VRS Service. Separating these two major components would help ensure consumers have the widest range of options and features approaching those offered to hearing consumers. Videophone equipment providers would bear the responsibility for ensuring their products were certified to the industry standards. This would effectively improve interoperability and deliver increased functionality to the VRS consumer.
- Finally, VRS providers should not be allowed to bind consumers to service contracts. Such a system would hinder new players entering the market, as it would be extremely difficult to attract new consumers, while at the same time limiting consumer choice. Promoting competition among providers helps to promote better service. Long-term contracts would prevent unsatisfied consumers from taking their business elsewhere. The result is reduced service levels for VRS consumers. Most would agree that the long-term contracts, such as those employed by cell phone companies and companies offering high-speed data connectivity, can result significant unnecessary costs to the end consumer. Replicating such a model with regard to VRS would negatively impact the growth and acceptance of VRS.

6. Protection of Providers from Under-Compensation and Avoidance of Over-

Compensation

22. As noted above, VRS providers are to be compensated for the reasonable costs of providing VRS. One way of ensuring that providers are neither under- or over-compensated for these services is to employ a true-up mechanism. We seek comment on the concept of a “true up.” In the context of pooling for common carriers, the National Exchange Carrier Association has permitted a two-year period within which local exchange carriers are permitted to correct cost and data submissions – a “true up.” In the past, the Commission has considered a “true-up” mechanism to address over-payments from the TRS Fund. We seek comment on whether there are legal limitations to the Commission applying a “true-up” mechanism to either recoup excess payments when actual expenses and rate of return on capital investment are less than the per-minute compensation rate, or additionally compensate providers when the opposite is true. Proponents of a “true-up” mechanism should also propose specific procedures and supporting legal arguments allowing such provisions. For example, parties should address whether a “true-up” provision would constitute retroactive ratemaking.

- A thoughtful review of historical costs and projected costs, factoring in other issues, should result in a rate setting process that adequately addresses and protects against over-compensation.
- There could be significant added costs and inefficiencies put in place if a “true-up” approach were to be utilized.
- There is little evidence to suggest that this would result in any savings as providers would have an incentive to inflate costs in order to maintain higher reimbursement rates.
- If a “true-up” approach were to be considered it should only be considered going forward, not retroactively.

- The Companies do not support the utilization of a “true-up” approach.

23. We also seek comment on the current process for allowing providers a rate-of-return on capital investment. Specifically, we ask whether the current rate-of-return methodology remains appropriate. Are there alternatives to the current process that would properly compensate providers for their investment in an efficient manner? Commenters should address the administrative burdens on providers of their proposals and assess the potential benefits against the administrative burdens. Commenters should also compare these benefits and burdens with those of continuing to apply the Commission’s prescribed rate of return to video relay services.

- The Companies agree the current rate-of-return methodology is flawed and does not account for all appropriate costs.
- Several models for improving provider compensation have recently been presented to the Commission including expanding the existing number of tiers and expanding the ranges within the tiers. We believe that these proposals, as well as a possible combination of these two proposals have merit and should be seriously considered.
- These concerns have been addressed in the responses already submitted. The Companies do not believe these models would impose an additional administrative burden.

7. Certification

24. Our rules currently offer potential VRS providers three routes to receive compensation from the Interstate TRS Fund; they can: (a) become part of a certified state program, (b) subcontract for another entity eligible to provide TRS, or (c) receive certification directly from the Commission. What kind of (if any) certification process is appropriate for providers of videophone equipment;

video communications service, or relay interpreter services? Should such certification differ from the current certification process for VRS providers? .

- The Companies do not believe that videophone equipment and video communications service require a separate certification process. Their products do need to be compliant with video relay industry standards that need to be established.

25. In the context of our existing rules, does the current federal certification process go far enough to ensure that potential providers are qualified to provide VRS in accordance with our rules? For example, should there be site visits to the applicant's physical VRS facilities either before and/or after they are granted certification? What other due diligence should the Commission require prior to considering a grant of certification? The Commission has several pending applications for VRS certification and routinely continues to receive inquiries from persons interested in learning how they can become VRS providers. The proliferation of such requests, while potentially fostering competition and innovation, raises concerns because some interested parties have no prior TRS or telecommunications experience. To what extent should entities that do not own or operate any TRS facilities, but who plan on merely contracting out the actual handling of calls, be eligible for VRS certification? To what extent should applicants be required to have prior telecommunications experience? Should the Commission grant provisional certification, and if so for how long? Assuming that there should be some threshold requirements even for provisional certification, what should these be? The Commission's existing certification process requires that applicants obtain common carrier status before being granted certification. However, certain states have been known to "rubber stamp" applications for such status, even where the applicant has no prior background of or

intention of engaging in other telecommunications services. Does it make sense to continue to require applicants for VRS certification to obtain common carrier status from a state?

- The Companies support every effort made to solidify and strengthen the certification process, and note that the process as it currently stands has seen no new providers approved in at least 18 months. Competition remains the best way to ensure continued development and enhancement of VRS services for consumers, and continued competition and a healthy market require the ongoing certification of new providers.
- For the sake of fairness and competition, any new rules or guidelines regarding certification put in place by the Commission must equally be applicable to both new entrants and existing certified providers. Currently, the apparent freeze on granting certification has provided an undue burden on those companies waiting for that approval and has limited the ability for such providers to meaningfully compete and provide improved services for consumers, damaging the efficiency of the program overall.
- Going forward, the process of acquiring certification should ensure that VRS providers are able to meet the minimum standards for the industry. Prospective entrants should be required to:
 - File a comprehensive application with the FCC;
 - Demonstrate a firm understanding of the rules and regulations applicable to the industry, and related issues;
 - Demonstrate the ability to comply with the mandatory minimum standards;
 - Employ a fully automated and proven call handling and data reporting system; and
 - Own and operate at least one call center of their own.